

OPD Payment Policies

Policy A -- Representation and applicability of policies

A1. Representation

Attorneys appointed to represent indigent appellate parties shall take all steps necessary to provide effective assistance of counsel on appeal, and to comply with the Rules of Appellate Procedure and Rules of Professional Conduct. These duties may include, but are not limited to: filing a designation of clerk's papers; filing a statement of arrangements; reviewing the clerk's papers and report of proceedings; consulting with the client at every critical stage of the proceedings; consulting with trial counsel and the clerk of the appellate court as necessary; conducting adequate legal research; drafting an appropriate brief or similar pleading; drafting a reply brief where appropriate; presenting any scheduled oral arguments in front of the clerk, commissioner or appellate court; and filing post-opinion motions or a petition for review where necessary and appropriate.

A2. Applicability

Both contract cases and non-contract cases will be handled in accordance with these policies. Contracts generally will be written in accordance with these policies. If in a particular case contract terms differ from these policies, the contract terms will control.

Policy B -- Payment events

B1. Payment events

OPD pays attorneys at the time of three "payment events" --

- a) First payment event -- Appointment. Includes reviewing the trial court file, ordering transcripts, communicating with the client, and filing a statement of arrangements with the court of appeals to perfect the appeal. Also includes a motion by counsel for discretionary review in civil cases involving a statutory right to counsel at all stages of the proceedings (for example, dependency or sexually violent predator cases), pursuant to the *Grove* decision, 127 Wn. 2d 221 (1995).
- b) Second payment event -- Filing a brief or brief equivalent, which includes:
 - i. A brief in a direct criminal appeal, an appeal from a termination of parental rights, an appeal from a probation revocation hearing, an appeal from a disposition in a juvenile offense matter, an appeal from a dependency hearing, an appeal from a sexual predator hearing, or an appeal from any other proceeding in which the expenditure of public funds for appellate indigent defense is authorized by law.
 - ii. A brief in a civil appeal when an in forma pauperis motion is granted by the Supreme Court authorizing the expenditure of public funds for appellate representation.
 - iii. A personal restraint petition when the expenditure of public funds for appellate court representation is authorized.
 - iv. Generally, a brief in a case when discretionary review has been granted by the Supreme Court or Court of Appeals.
 - v. A motion for voluntary withdrawal.
- c) Third payment event -- Date of oral argument (or the date the court hears the case without oral argument).

Policy C -- When invoices shall be filed

C1. Invoices of counsel

- a) Attorneys who are assigned indigent appellate cases must invoice OPD within 60 days of each of the three specified payment events.
- b) Even if a case is delayed for some reason, attorneys must file all invoices within the 60-day limit, based on the date the payment event occurs. This applies, for example, when a stay is entered pending the outcome of another case.
- c) Submission of an invoice more than 60 days from the date of the payment event will result in late penalties of 10% of the original invoice per month or partial month, unless good cause is shown, as determined by OPD in its discretion.

Comment: OPD pays attorneys for their work on an on-going basis. This provides a dependable cash flow for the attorneys to cover expenses as they work on the cases (which may take two years or more from start to finish).

Comment: If the Supreme Court accepts review of a Court of Appeals case, the Supreme Court case constitutes a new case for which an initial invoice must be submitted within 60 days.

C2. Extraordinary compensation

- a) Counsel may petition the Office of Public Defense for additional compensation reflecting unusual work in a case beyond basic services. Factors which OPD may consider in deciding whether to award extraordinary compensation include:
 - i. Complex or unusual legal issues requiring unusual research or costs.
 - ii. Issues of first impression under the law of Washington without *stare decisis* requiring unusual research.
 - iii. Complex and lengthy trial record relevant to issues raised on appeal.
 - iv. Supplemental briefing requested or authorized by the appellate court.
 - v. Cases creating an unusual financial hardship upon the attorney.
 - vi. A certification of extraordinary status by the court hearing the case.
- b) Attorneys seeking extraordinary compensation must submit a request letter including an affidavit or declaration and any other supporting materials necessary for a review of the request.

C3. Invoices of court reporters

Invoices of court reporters may be submitted as soon as the report of proceedings has been filed by the court reporter. Submission of an invoice more than 60 days from the date the record is filed will result in late penalties of 10% of the original invoice per month or partial month, unless good cause is shown, as determined by OPD in its discretion.

C4. Invoices of the superior court clerks

Invoices of superior court clerks may be submitted as soon as the clerks' papers have been prepared and must be submitted no more than 60 days after the clerks' papers have been prepared.